

## HUMAN SERVICES BOARD

# INTRODUCTION

The petitioner appeals the decisions by the Department for Children and Families, Family Services Division substantiating two reports that the petitioner sexually abused children and denying the petitioner's request to expunge those reports from the child abuse registry. The Department has moved for summary judgment on both issues based on the petitioner's criminal convictions in those two cases and on the petitioner's failure to verify that he has rehabilitated himself successfully following his convictions. The issue regarding "substantiation" is whether the petitioner's sexual assault convictions stemming from the same incidents are binding on the Board as a matter of collateral estoppel. The issue regarding "expungement" is whether the Department abused its discretion in not removing the petitioner's name from the child abuse registry.

DISCUSSION

The pertinent statutes, at 33 V.S.A. § 4912, include the following:

(2) An "abused or neglected child" means. . .a child who is sexually abused. . .  
. . .

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. . .

There is no dispute in this matter that in 1999 the petitioner, following a plea of guilty, was convicted of the crime of Sexual Assault on a Minor, for which he served time in prison. The charges included the finding that the petitioner, who was then eighteen, had sexual intercourse with a fourteen-year-old girl.

That same year the petitioner also pled guilty to the crime of Prohibited Acts. Those charges included the finding that the petitioner sexually abused his stepson by fondling the child's penis. At the time of that crime the petitioner was twenty and his stepson was five and a half.

There is no dispute that the Department of Corrections has reported to the Department for Children and Families that the petitioner did not successfully complete a sex offender treatment program, and that he is considered to be a "high

risk" to reoffend. There is also no dispute that the petitioner is currently in the State of Vermont Sex Offender Registry as a result of the above convictions.

The Board has repeatedly and consistently held, and the Vermont Supreme Court has affirmed, that the doctrine of collateral estoppel applies in cases in which there has been a prior adjudication on the issue of child abuse or neglect. *In re P.J.*, No. 2008-057 [Jan. 26, 2009], (see also *Croteau v. Malloy*, 135 Vt. 64 [1977]). Inasmuch as there is no dispute that the petitioner in this matter was convicted of Sexual Assault on a Minor and Prohibited Acts involving the same incidents that are under review here, the petitioner cannot now relitigate the issue of whether the reports of sexual abuse were substantiated.

The Board's authority in reviewing the Department's decision in an expungement request is limited. 33 V.S.A. § 4916c(e) provides that *"the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petitioner for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board."* In its decision not to expunge the reports from its registry the Department noted that the petitioner

has failed to produce any evidence of rehabilitation. Therefore, it cannot be concluded that the commissioner has abused his discretion in denying the petitioner's request to expunge the reports in question from its registry.

ORDER

For the above reasons the Department's decisions substantiating the reports in question and refusing to expunge them from its registry is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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